IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 208 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BANASKANTHA DISTRICT CO-OP. MILK PRODUCERS UNION LTD
Versus
COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 208 of 1993
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for our opinion for assessment years 1981-82 and 1982-83:-

(i) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in interpreting of application of section 35C of the Income-tax Act, 1961?"

(ii) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the expenditure of Rs.12,50,347/- was not eligible for weighted deduction u/s.35C of the Income-tax Act?"

(iii) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that only 10% of the expenses incurred on dissemination of information of demonstration of modern technique or method of agricultural animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s.35C of the Act?"

2. The questions are identical for both the years except for the figure Rs.12,50,347/- for assessment year 1981-82, the figure is Rs.15,16,817/- for assessment year 1982-83.

3. Heard Mr Manish J Shah, learned counsel for the applicant- assessee and Mr Manish R Bhatt, learned counsel for the revenue.

4. At the hearing of this reference, our attention is invited to the decision in the case of Kaira Dist. Co-op. Milk Producers Union Ltd. vs. CIT (2002) 253 ITR 766 wherein identical questions were referred for the opinion of this Court. In the order giving rise to this reference, the Tribunal had taken the same view of the provisions of Section 35C of the Income-tax Act, 1961 as it had taken in the case of Kaira Dist. Co-op. Milk Producers Union. In the aforesaid reported decision, this Court held that the Tribunal was not right in its interpretation in application of Section 35C of the Act. Accordingly, the question was answered in favour of the assessee.

Following the aforesaid decision, our answer to question No.1 is in the negative i.e. in favour of the assessee and against the revenue.

5. As far as the second question is concerned, following the aforesaid decision in the case of Kaira Dist. Co-op, Milk Producers Union, we are of the view that the Tribunal erred in holding that the entire expenditure of Rs.12,50,347/- was not eligible for weighted deduction under Section 35C of the Act.

Accordingly, our answer to question No.2 is in the negative i.e. in favour of the assessee and against the revenue.

6. Coming to question No.3, this Court considered all the items which are disputed in the present case. This Court held that the expenses incurred on dissemination of information of demonstration of modern technique or method of agricultural animal husbandry and dairy and poultry farming and advice on such techniques or methods are eligible for deduction under section 35C of the Act.

Following the aforesaid decision, our answer to question No.3 is in the negative i.e. in favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-